IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13129 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DURLABBHAI HIRABHAI PATEL

Versus

DECEASED MATHURBHAI MOHANBHAIVASAVA

Appearance:

1. Special Civil Application No. 13129 of 2003

MR JITENDRA M PATEL for Petitioner No. 1

..... for Respondent No. 1

MR RN SHAH for Respondent No. 1/1,2

MR PRAFUL N THAKKAR for Respondent No. 1/1,1/2-1/5,3-4-2

MR HD DAVE, AGP, for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 08/04/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP Shri H.D. Dave for respondents Nos. 5 and 6 and by learned advocate Shri Thakkar for respondents Nos. 1 to 4. At the request of the learned advocates, the petition is finally heard today.

2. The facts giving rise to the present petition, in a nutshell, are as under :

2.1 Land bearing Survey No. 109/3 - Block No. 179 originally belonged to Shri Mohanbhai Ramabhai and Shri Chhitabhai Ramabhai. Late Shri Mohanbhai Ramabhai was having his share in the said to the extent of 1 acre 4 gunthas. The said land was having restricted tenure under the provisions of sec. 73AA of Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code'). Late Shri Mohanbhai Ramabhai had executed his will, whereby his share of the land in question had been bequeathed in favour of the present petitioner. Late Shri Mohanbhai Ramabhai expired on 26 April 1994, and as he had executed a will, which had been duly registered, the land belonging to late Shri Mohanbhai Ramabhai was given to the petitioner and Entry No. 2204 to that effect had been mutated. The said entry was not certified. As the entry was not certified, the petitioner filed an appeal, which had been rejected and ultimately, a revision application was filed by the petitioner before the State of Gujarat. The revision application has been rejected by an order dated 31.7.2003 and, therefore, the petitioner has approached this court.

3. Learned advocate Shri Patel appearing for the petitioner has submitted that there is no violation of the provisions of sec. 73AA of the Code because the land in question was not transferred by late Shri Mohanbhai Ramabhai. The petitioner got the land in question under a will executed by late Shri Mohanbhai Ramabhai and, therefore, there was 'transmission' of the land in question and not 'transfer'. He has relied upon a judgment delivered by this court in the case of Gopiraj Dedraj Agrawal v. State of Gujrat, 2004(1) G.L.R. 237. In the said judgment it has been held that transfer and transmission are different things and when the property is inherited by a legatee, he does not get the land by 'transfer' but he gets it by transmission.

4. In view of the above legal provision, he has submitted that in the instant case also there was transmission of the property and not transfer and, therefore, the provisions of sec. 73AA of the Code are

not violated.

5. Learned advocate Shri Thakkar appearing for the legal representatives of late Shri Mohanbhai Ramabhai has not objected to the said transmission, and affidavits to that effect have been filed. Thus, they have submitted that they would like the last wish of late Shri Mohanbhai Ramabhai to be fulfilled by giving the land in question to the petitioner.

6. Learned AGP Shri Dave has submitted that by virtue of the will, late Shri Mohanbhai Ramabhai had tried to violate the provisions of sec. 73AA of the Code. He has submitted that the said section has been enacted to see that the lands belonging to poor tribals are not transferred to others. However, he could not distinguish the facts of the case from the judgment referred to hereinabove by learned advocate Shri Patel.

7. Upon hearing the learned advocates and looking to the facts of the case, it is clear that in the instant case late Shri Mohanbhai Ramabhai had not transferred the land in question to the petitioner, but, by virtue of a will executed by him, by way of bequest, the petitioner has received the land and, therefore, the said transaction cannot be said to be a transfer and it would not be in violation of the provisions of sec. 73AA of the Code.

8. Looking to the aforestated position and the law laid down by this court in the case of Gopiraj Dedraj Agrawal (supra), the impugned order passed by respondent No. 6 dated 31.7.2003, is quashed and set aside. The concerned revenue authority is directed to mutate necessary entry so that the land can be shown in the revenue record as land belonging to the petitioner.

9. The petition stands disposed of as allowed. Rule is made absolute with no order as to costs

(A.R. Dave, J.)

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